IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 23368 of 2004

Between:

B.Veera Reddy, S/o.Ramareddy,
Kandlaguduru (V), Peddavaduguru (M), Anantapur Dist.

..... PETITIONER

AND

1 The Joint Collector, Anantapur Dist.
2 The Revenue Divisional officer, Anantapur, Anantapur District.
3 The Mandal Revenue officer, Peddavaduguru, Anantapur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more particularly one in nature of writ of Mandamus declaring the action of 1st respondent in issuing the impugned proceedings vide D.Dis.No.K4/ATP/1060/ 2004, dt.6-11-2004 in confirming the orders of the 2nd respondent in suspending the authorization of the petitioner pending enquiry is arbitrary, illegal and consequently direct the respondents to permit the petitioner to continue as fair price shop dealer pending disposal of the enquiry before the 2nd respondent in the interest of justice.

Counsel for the Petitioner: MR.K.SITA RAM

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court, at the stage of admission, made the following:

ORDER:

Petitioner is a fair price shop dealer. The 2nd respondent issued a Show-Cause Notice, dated 12.07.2004, directing the petitioner to explain as to why suitable action shall not be taken against him for the irregularities pointed out therein. Petitioner submitted explanation, in response thereto. On a consideration of the same, 2nd respondent issued proceedings, dated 02.08.2004, suspending the authorization of the petitioner. Aggrieved thereby, petitioner preferred an appeal before the 1st respondent. The appeal was dismissed on 06.11.2004. Hence, this writ petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for Civil Supplies.

The authorization of the petitioner was suspended after issuing a Show-Cause Notice and considering the explanation offered by the petitioner. Under Sub-Clause (4) of Clause 5 of the A.P. State Public Distribution System Control Order, 2001, the appointing authority is empowered to cancel or suspend the authorization of a dealer, after conducting an enquiry. It is permissible to suspend the authorization pending enquiry, even without issuing such notice. Where a suspension is ordered, after issuing the Show-Cause notice and considering the explanation, it has to be only by way of a substantive penalty for a particular period. Suspension of a dealership, after issuance of the Show-Cause Notice, by its very nature, cannot be pending enquiry. The reason is that the enquiry is already held and nothing needs to be done further. Through the impugned proceedings, 2nd respondent suspended the authorization of the petitioner, pending enquiry, after issuing a show cause notice and considering the explanation. Hence, there is a clear contradiction in terms.

Further, one of the charges against the petitioner was that he holds certain bogus cards. Petitioner flatly denied the allegation. The 2nd respondent observed that it was for the petitioner to establish that he did not hold bogus cards. In effect, the 2nd respondent wanted the petitioner to establish a negative fact. It is opposed to the basic principles of evidence. When an allegation is made against the petitioner that he holds bogus cards, it is for the concerned authority to point out the nature and identity of such cards, and it is only then that the charge can be said to have been proved.

For the foregoing reasons, the impugned order is set aside. It is, however, let open to

the respondents to initiate such action against the petitioner as is open to them in law duly following the prescribed procedure. No order as to costs.

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L.NARASIMHA REDDY, J

Dated : 20th December, 2004

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To

1 The Joint Collector, Anantapur Dist.
2 The Revenue Divisional officer, Anantapur, Anantapur District.
3 The Mandal Revenue officer, Peddavaduguru, Anantapur District.

4 2 CCs to the G.P. for Civil Supplies, High Court of A.P., Hyderabad (OUT).

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